

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICHARD WEDDLE,

Plaintiff,

V.

RENEE BAKER, et. al.,

Defendants.

3:14-cv-00241-MMD-WGC

REPORT & RECOMMENDATION OF U.S. MAGISTRATE JUDGE

Re: ECF No. 35

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Plaintiff's Request for Preliminary Injunction. (ECF No. 35.)¹ Defendants filed a response. (ECF No. 29.) Plaintiff filed a motion to strike the response (ECF No. 45), which the court has since denied (ECF No. 51).

After a thorough review, the court recommends that Plaintiff's motion be denied.

I. BACKGROUND

At all relevant times, Plaintiff was an inmate in the custody of the Nevada Department of Corrections (NDOC). (Pl.'s Compl., Doc. # 5.) He is a pro se litigant and brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) He asserts claims related to the denial of kosher meals while being transported from Ely State Prison (ESP), and then at Southern Desert Correctional Center (SDCC) and Lovelock Correctional Center (LCC). (*Id.*)

First, Plaintiff was allowed to proceed with a First Amendment free exercise claim in Count I against defendants Sandoval, Baker and Moore based on his allegation that he was denied a kosher diet on January 11, 2012. (See Amended Screening Order, ECF No. 8 at 5-6.)

¹ Refers to court's electronic case filing (ECF) number.

1 Plaintiff alleges that he was housed at ESP from 2010 through January 11, 2012, and on
2 August 24, 2011, Sandoval, Baker and Moore approved Plaintiff's change of religion forms to
3 Judaism and inmate religious diet to kosher. (ECF No. 5 at 5.) He began receiving kosher meals
4 in September or October 2011. (*Id.* at 11.) On January 11, 2012, he received approval for transfer
5 to a medium security prison and boarded a transport bus. (*Id.*) The transportation correctional
6 officers gave Plaintiff a non-kosher transport meal. (*Id.*) Plaintiff informed them he required a
7 religious diet, and they told him that was all there was, so he could take it or go hungry. (*Id.*)
8 Plaintiff went hungry.

9 Second, Plaintiff was allowed to proceed with a First Amendment free exercise claim in
10 Count II against defendants Youngblood and Williams based on his allegations that he was
11 denied kosher meals at SDCC. (See ECF No. 8 at 6.) Here, Plaintiff alleges that when he arrived
12 at SDCC on January 11, 2012, prison officials did not provide him with a kosher meal for dinner.
13 (ECF No. 5 at 6, 15.) On January 12, 2012, he was not on the call-out list for kosher meals. (*Id.*
14 at 15.) On January 30, 2012, Plaintiff sent an inmate request form to Chaplain Youngblood who
15 responded that Plaintiff was listed as Jewish. (*Id.*) On March 1, 2012, Youngblood responded to
16 Plaintiff's request about kosher meals and stated that Plaintiff's name was not on the kosher
17 master list. (*Id.* at 16.) On April 25, 2012, Plaintiff met with Youngblood. (*Id.*) He told Plaintiff
18 that Williams did not want any new inmates approved for kosher diets and he was not authorized
19 to approve kosher diets after March 20, 2012. (*Id.* at 16-17.) Plaintiff told Youngblood he had
20 been approved on August 24, 2011. (*Id.* at 17.) On May 16, 2012, Youngblood told Plaintiff he
21 had approved Plaintiff's return to his religious diet and forwarded the approval to Williams. (*Id.*)
22 Plaintiff says relief was granted and his issue was resolved from February 1, 2012 through July
23 2012. (*Id.*) There appears to be a discrepancy between these dates, but this is what Plaintiff has
24 alleged.

25 Finally, Plaintiff was allowed to proceed with a First Amendment free exercise claim in
26 Count III against defendants Stogner and Deal based on his allegations that he was denied kosher
27 meals at LCC because he was not on the master list. (See ECF No. 8 at 6-7.) Plaintiff alleges that
28 on July 25, 2012, he transferred from SDCC to LCC. (ECF No. 5 at 7.) He did not receive a

1 kosher meal during his transport or at LCC. (*Id.*) On July 29, 2012, Plaintiff sent a request to the
 2 LCC chaplain's office stating he had been approved for kosher diet at ESP on August 24, 2011.
 3 (*Id.* at 18.) Chaplain Stogner replied that Plaintiff's kosher meal requirement expired on
 4 February 10, 2012, and Plaintiff was not listed on the kosher diet master list. (*Id.*) Plaintiff filed
 5 grievances. (*Id.*) On August 17, 2012, Deal responded and said Plaintiff had never been on the
 6 SDCC kosher meal list and had not been receiving kosher meals from November 1, 2011 through
 7 July 26, 2012. (*Id.*)

8 Plaintiff now moves for a preliminary injunction, asking that Defendants be ordered to
 9 furnish Plaintiff with his approved kosher diet. (ECF No. 35.)

10 **II. LEGAL STANDARD**

11 The purpose of a preliminary injunction or temporary restraining order is to preserve the
 12 status quo if the balance of equities so heavily favors the moving party that justice requires the
 13 court to intervene to secure the positions until the merits of the action are ultimately determined.
 14 *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). A preliminary injunction is an
 15 “extraordinary and drastic remedy” that is “never awarded as of right.” *Munaf v. Geren*, 553 U.S.
 16 674, 689-90 (2008) (citations omitted). Instead, in every case, the court “must balance the
 17 competing claims of injury and must consider the effect on each party of the granting or
 18 withholding of the requested relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555
 19 U.S. 7, 23 (2008) (internal quotation marks and citation omitted). The instant motion requires
 20 that the court determine whether Plaintiff has established the following: (1) he is likely to
 21 succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary
 22 relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest.
 23 *Id.* at 20 (citations omitted).

24 An even more stringent standard is applied where mandatory, as opposed to prohibitory
 25 preliminary relief is sought. The Ninth Circuit has noted that although the same general
 26 principles inform the court's analysis, “[w]here a party seeks mandatory preliminary relief that
 27 goes well beyond maintaining the status quo pendente lite, courts should be extremely cautious
 28 about issuing a preliminary injunction.” *Martin v. International Olympic Committee*, 740 F.2d

1 670, 675 (9th Cir. 1984) (citation omitted). Thus, an award of mandatory preliminary relief is
 2 not to be granted unless both the facts and the law clearly favor the moving party and extreme or
 3 very serious damage will result. *See Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir.
 4 1979) (citations omitted). “[I]n doubtful cases” a mandatory injunction will not issue. *Id.*

5 Finally, the Prison Litigation Reform Act (PLRA) mandates that prisoner litigants must
 6 satisfy additional requirements when seeking preliminary injunctive relief against prison
 7 officials. The PLRA provides, in relevant part:

8 Preliminary injunctive relief must be narrowly drawn, extend no further than
 9 necessary to correct the harm the court finds requires preliminary relief, and be
 10 the least intrusive means necessary to correct that harm. The court shall give
 substantial weight to any adverse impact on public safety or the operation of a
 criminal justice system caused by the preliminary relief and shall respect the
 principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief.

11 18 U.S.C. § 3626(a)(2). Thus, § 3626(a)(2) limits the court’s power to grant preliminary
 12 injunctive relief to inmates. *See Gilmore v. People of the State of California*, 220 F.3d 987, 998
 13 (9th Cir. 2000). “Section 3626(a)...operates simultaneously to restrict the equity jurisdiction of
 14 federal courts and to protect the bargaining power of prison administrators-no longer may courts
 15 grant or approve relief that binds prison administrators to do more than the constitutional
 16 minimum.” *Id.* at 999.

17 III. DISCUSSION

18 Plaintiff must first establish a likelihood of success on the merits in this action. His
 19 motion focuses not on the First Amendment free exercise claims he was allowed to proceed on,
 20 but on general notions of procedural due process. (ECF No. 35 at 1-6.) He asserts generally that
 21 he was denied a kosher diet, but does not include a discussion of any specific facts that would
 22 allow the court to conclude he has a likelihood of succeeding on the merits of the claims actually
 23 proceeding in this case.

24 Second, Plaintiff must show a likelihood of irreparable injury in the absence of the
 25 issuance of injunctive relief. Here, Plaintiff merely points to a case, *Faith Center Church*
26 Evangelistic Ministries v. Glover, 462 F.3d 1194 (9th Cir. 2006), *as amended*, 480 F.3d 891
 27 (9th Cir. 2007), where the court concluded that enforcement of the county library meeting room
 28 policy was likely to violate the Faith Center’s right to freedom of expression and demonstrated

1 irreparable harm. (See ECF No. 35 at 6.) Plaintiff provides no discussion of how *he* would suffer
2 irreparable harm in the absence of injunctive relief.

3 Third, Plaintiff must demonstrate that the balance of hardships tips in his favor. Here,
4 Plaintiff states that he was served kosher meals over Passover during April 2015, and asserts that
5 this demonstrates that the State purchases kosher food, and therefore it cannot claim hardship in
6 having to serve him a kosher diet. (ECF No. 35 at 7.) The court appreciates Plaintiff's argument,
7 but the fact that he was served kosher meals for a week does not address the *balance* of hardships
8 issue.

Finally, Plaintiff must show that a preliminary injunction is in the public interest. Plaintiff asserts that complying with the Constitution is always in the public interest. (ECF No. 35 at 7-8.) That may be the case, but Plaintiff has not successfully demonstrated that Defendants have run afoul of the Constitution. Without such a showing, the court cannot conclude that injunctive relief would be in the public interest.

Having failed to satisfy the prerequisites for injunctive relief, the court recommends that Plaintiff's motion be denied.

IV. RECOMMENDATION

17 **IT IS HEREBY RECOMMENDED** that the District Judge enter an order **DENYING**
18 Plaintiff's Motion for Preliminary Injunction (ECF No. 35).

19 The parties should be aware of the following:

20 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
21 this Report and Recommendation within fourteen days of receipt. These objections should be
22 titled "Objections to Magistrate Judge's Report and Recommendation" and should be
23 accompanied by points and authorities for consideration by the district judge.

24 2. That this Report and Recommendation is not an appealable order and that any notice of
25 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
26 until entry of judgment by the district court.

27 DATED: December 2, 2015.

William G. Cobb
WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE